

Appeal of Peter F. and Betty H. Eastman

The issues presented are: (1) whether respondent properly adjusted appellants' income by adding unreported income and disallowing certain claimed deductions for lack of substantiation, and (2) whether respondent **properly** imposed a five percent negligence penalty in each of the years in question.

Appellant Peter F. Eastman is a medical doctor and a professional writer of sea stories. Appellant Betty H. Eastman held one-half of the stock in a business called **Pegan** Originals, Inc., which ceased doing business on December 31, 1972. The deductions claimed here were for both business and personal expenses, and for clarity and convenience, we have stated separately the facts pertaining to each category of claimed deductions.

Charitable Contributions. Appellants allegedly made charitable contributions in 1971, 1972 and 1974. The 1971 total of claimed **deductions** was \$2,858; of this, respondent allowed \$20 for a cash donation and \$400 for **noncash** items donated to one charity. The 1973 total of \$1,190 was supported by a check record and respondent allowed all of it except for \$118 paid toward wedding expenses of a third party. The 1974 claim for a \$1,850 **noncash** contribution was disallowed entirely because appellants failed to **provide** any evidence that the alleged contribution was made.

Business Expenses. In 1971 and 1972 Mrs. Eastman claimed deductions for entertainment expenses connected with her business, **Pegan** Originals, Inc. There were no corporate minutes or other records showing authorization of the expenses by the corporation. Appellants produced some receipts which did not correlate with the claimed deductions, and respondent disallowed the deductions for lack of substantiation and, further, because they were corporate rather than personal expenses. Mrs. Eastman's claimed deduction for business expenses in 1973 was disallowed because the evidence showed that **Pegan** Originals, Inc., ceased doing business on December 31, 1972.

Dr. Eastman claimed certain deductions for business expenses incurred as a writer. In all the years in issue, respondent allowed those deductions where (1) appellant offered proof of the expenditures or (2) where a reasonable estimate of expenses could be made. The only evidence produced by appellants was a check record in 1972 but this contained no designation of the expenditures as business expenses. Appellants appear to contend

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that respondent's request for such supporting invoices is unreasonable because the necessary papers were lost or misplaced.

Additional Income. Respondent determined that Dr. Eastman failed to report all of his 1974 income from writing, because receipts were discovered for royalty payments received in April and June of that year. Appellants refused to produce any records concerning this income, so respondent annualized the available data and attributed an additional \$3,531 in income to appellants.

Auto and Telephone Expenses. For all the years in issue respondent allowed deductions for those auto and telephone expenses which were attributable to the business of either appellant and were substantiated.

Rental Property Loss. In 1971 appellants claimed a loss of \$1,003.00 on a duplex which appellants used as their residence. The tenant living in the other half was evicted and the property was not thereafter offered for rent, nor was rental income obtained from it. Respondent disallowed the entire loss deduction claimed.

Capital Loss Carryover. In 1971, appellants claimed a carryover loss deduction for a capital loss allegedly incurred in 1970 on an exchange of property. Respondent disallowed the claimed deduction because the total 1970 loss was applied in 1970, leaving nothing to carry over to 1971. ^{1/} Respondent did allow a short term capital loss of \$230.00 in 1971.

Travel. In 1972, appellants deducted the expenses of a trip to Java during which Dr. Eastman donated his services to a medical foundation. Respondent determined that only 27 days of the 43 day trip could reasonably be associated with the foundation; the remainder was a vacation period. Respondent allowed 63 percent of the plane fare and meal costs and \$100 for lodging at the foundation, while disallowing the expenses for the vacation period.

Small Business Stock Loss. Appellants claimed a \$4,508 small business corporation stock loss for Pegan Originals,

1/ Respondent also determined that the Property in question had been sold rather than exchanged, resulting in a \$20,000 gain which appellants had not reported.

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Inc., in 1973 under the provisions of sections 18206-18210 of the Revenue and Taxation Code. Respondent requested proof that a valid stock issuance plan had been adopted, but appellants did not produce the corporate ledgers showing that this had been done. Therefore, respondent **allowed only** a \$1,000 capital loss.

Unreported Capital Gain. In 1973, appellants exchanged their Balboa Island home for a home in Corona Del Mar. The latter home was sold and within one year appellants purchased a yacht which became their personal residence. The exchange and sale were not reported on their income tax return, but respondent determined through invoices provided by the yacht seller that there was a short term capital gain of \$6,391 realized on the above series of transactions. Appellants contended that no gain was realized but they provided no cost data to support their position.

Professional Expenses. For 1974 appellants claimed **\$642.00 -as** professional expenses associated with Dr. Eastman's medical practice. Appellant's records were poor and provided little substantiation. Respondent disallowed \$342.00 of the amount claimed.

Exemptions. In 1971 and 1972 appellants claimed exemption credits for three dependent" and in 1973 claimed one dependent **and an additional blind exemption.** Appellants admitted that the claimed individuals were appellants' married daughters, none of whom had lived with appellants during the years in issue. Respondent disallowed these exemption credits.

In each factual situation set forth above, respondent disallowed all or part of the claimed deductions because appellants failed to substantiate them. The burden is on the taxpayer to show that he is entitled to deductions allowed by law. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 13481 (1934)]; Appeal of James M. Denny, Cal. St. Bd. of Equal., May 17, 1962.) Respondent's disallowance of a deduction is presumed correct (Appeal of Robert V. Erilane, Cal. St. Bd. of Equal., Nov. 12, 1974) and appellant must furnish reasonable proof in support of his deductions. (Appeal of James M. Denny, supra.) Here, it is clear that appellants simply did not present the facts necessary to sustain their position. **Unsupported** assertions are insufficient to satisfy appellants' burden of proof (Appeal of James C. and Monablanché A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975) and a claimed loss of supporting records

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does not relieve them of that burden. (Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973.)

Finally, on the basis of the record herein, we agree with respondent that appellants were careless in maintaining their records and preparing their returns and that they disregarded respondent's regulations by failing to substantiate their claims despite repeated requests that they do so. Therefore, the negligence penalty was **properly assessed**. (Rev. & Tax. Code, § 18684.)

For the above reasons, we conclude that in all matters here in issue, respondent's action must be **sus-**tained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Peter F. and Betty H. Eastman against proposed assessments of additional personal income tax and penalties in the total amounts of \$1,007.32, \$1,116.67, \$973.45 and \$785.02 for the years 1971, 1972, 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day
of May , 1978, by the State Board of Equalization.

Scott C. Kelley, Chairman
John W. O'Neil, Member
Iris Sankey, Member
William H. Barnes, Member
_____, Member